XXXII.

THE TRYAL OF

Rowland Walters,
Dearing Bradshaw,
AND
Ambrose Cave,
Gent.

(For Murthering of

Sir Charles Pymm, Bar^t.)

At the SESSIONS held at the

OLD-BAILEY,

On *Friday* the First day of *June*, 1688.

Before the Right Honourable Sir *John Shorter* Kt. Lord Mayor of the City of *London*, and Sir *Bartholomew Shoares* Kt. Recorder of the same City, together with others His Majesties Justices of the Peace for the City of *London*, and County of *Middlesex*.

Clerk. CRyer, make Proclamation.

Cryer. O yes, O yes, O yes.

Clerk. Keeper of *Newgate*, bring the Prisoners to the Bar. Which was done.

Clerk. You the Prisoners at the Bar, those men whom you shall hear called, and personally appear, are to try between our Sovereign Lord the King, and you who are Arraigned, upon your several Lives and Death, if you shall except against any one of them, you must speak before they be sworn.

Clerk. Cryer, call *Henry Dyer*.

The Jurors Sworn are as followeth.

Henry Dyer	*William Villers*
Giles Baggs	*John Frith*
Matthew Ferman	*John Hill*
Timo. Waldoe	*Obadiah Hickman*
Richard Chase	*John Read*
Samuel Burgess	*Francis Willis.*

Which were all Sworn.

Clerk. Cryer, count these Twelve Good men and True.

Clerk. Cryer, make Proclamation. Which was done.

Clerk. *You Gentlemen of the Jury, look upon the Prisoners at the Bar, and hearken to their Charge, they stand Indicted by the Names of* Rowland Walters, Dearing Bradshaw, *and* Ambrose Cave, *Gent. for that they, not having the fear of God before their eyes, but being instigated and seduced by the Devil and their own wicked hearts, on the fourth day of* May, *in the Fourth year of the Reign of our Sovereign Lord King* James *the Second, in the Parish of St.* Nicholas Cole-Abby, *in and upon Sir* Charles Pymm, *Bar. Feloniously, willfully, and of their malice before thought, did make an Assault; and that he the said* Rowland Walters, *having then and there in his right hand, a certain Rapier made of Iron and Steel, of the value of about 5 s. and thrust him the said Sir* Charles Pymm

in

in and upon the right ſide of him the ſaid Sir Charles Pymm, *a little above the right Pap, did ſtrike and thruſt as aforeſaid, giving him the ſaid Sir* Charles Pymm, *a little above the right Pap, one mortal Wound of the bredth of one Inch, of the depth of ten Inches; and that they the ſaid* Dearing, Bradſhaw, *and* Ambroſe Cave, *were preſent, aiding, abetting, and aſſiſting him the ſaid* Rowland Walters *in the perpetration of the ſaid wilful Murther of him the ſaid Sir* Charles Pymm; *ſo that they three, the Priſoners at the Bar, with Malice fore-thought, did intentionally Kill and Deſtroy, and willfully Murther him the ſaid Sir* Charles Pymm, *againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, and againſt the Form of the Statute of that Caſe made and provided. Upon this Indictment they have been Arraigned, and have hereunto pleaded Not Guilty, and for their Tryal, have put themſelves upon God and their Country, which Country you are. Your buſineſs is to enquire, whether they or either of them committed this Fellony and Murther as aforeſaid, if you find them or either of them guilty of the ſaid wilful Murther, you are to enquire what Goods and Chattle they or either of them had at the time of the committing of the ſaid willful Murther; but if you find them not Guilty, you are to ſay ſo; and hear your Evidence.*

Mr. *Walters*. My Lord, I humbly deſire theſe Gentlemen may be tried before me.

Court. That cannot be, Mr. *Walters*, becauſe you are all three put into one Indictment.

Council for the King. My Lords, and you Gentlemen of the Jury, I am here retained a Council for the King, againſt the Priſoners at the Bar, who all three ſtand indicted for the Murther of Sir *Charles Pymm* Baronet, in the Pariſh of St. *Nicholas Cole-Abby*, thruſting him through the Body near the right Pap, giving him a Mortal Wound, of which he then and there inſtantly died. The other two Priſoners ſtand indicted for aiding, abetting, and aſſiſting him the ſaid *Walters* in the ſaid Murther.

Another Council for the King. My Lords, this Murther fell out on the fourth day of *May* laſt after this manner, *viz.* The ſaid Sir *Charles Pymm*, one Mr. *Murriday*, and Mr. *Neale*, and Sir *Thomas Middleton* and others, dined at the Swan Tavern upon *Fiſh-ſtreet-hill*; after they were come into the Houſe, they went up ſtairs, after which the Priſoners at the Bar came into the Houſe, and took another Room to Dine of Beef and other things. But one of Sir *Charles*'s Company deſired to have a Plate of it; upon which Mr. *Clowdſley* told them ſome Gentlemen had beſpoke it for Dinner, but he ſaid he would get them a Plate of it, which was ſent up, and ordered to be reckoned into Mr. *Walters* the Priſoners Bill; after Dinner they drank their Healths, and returned them thanks for their Beef; and towards the Evening Sir *Charles Pymm* and his Friends came down ſtairs, and met the Priſoners at the bottom, and Mr. *Cave* asked them how they liked the Beef that was ſent up; upon which one in the company anſwered, and told them, they did not ſend it, for they had paid for it; upon which farther words aroſe, and Mr. *Bradſhaw* drew his Sword and fell upon Sir *Charles Pymm*, but he got out into the Streets, after which Mr. *Walters* came forth, and plucked Sir *Charles Pymm* by the arms, and forced him to fight with him, ſaying, here is my hand, and here is my Sword; and as ſoon as he was in the Street, he received this mortal Wound, and ſo fell down dead; and after this Mr. *Walters* took him by the nape of the neck, and daſhed his head upon the ground, and cried out, God Damn you, you are dead; and ſaid farther, let the Sword alone in his Body. My Lords this ſhall be proved to be done, without any manner of provocation; and if ſo, I hope your Lordſhips will find him guilty of willful Murther.

Cryer. Call Mr. *Murriday*, Mr. *Neale*, Mr. *Palms*, and Mr. *Bridges*. Who were Sworn.

Mr. *Murriday*. My Lord, on the fourth day of *May* laſt, on a Friday, Sir *Charles Pymm*, my ſelf, and theſe Gentlemen here in Court, came to dine at the Swan Tavern in *Old Fiſh-ſtreet*, we aſked for Meat, and Mr. *Clowdsley*, the man of the Houſe, told us, we might have Fiſh, for he had no Meat, but what was beſpoke by Mr. *Walters* and his company; we deſired him to help us to a Plate of it if it might be got, which we had brought up ſtairs; after Dinner we drank the Gentlemens Health that ſent it, and returned them thanks for it: a while after Sir *Thomas Middleton* went away, and about an hour after that, or thereabouts, Sir *Charles Pymm* and the reſt of us came down to go away, and when we were in the Entry, Mr. *Cave* met us, and aſked Sir *Charles* how he liked the Beef that was ſent up, who anſwered, we did not know you ſent it, for we have paid for it; then the Boy that kept the Bar told us, that he did not reckon it in the Bill; upon which Mr. *Cave* ſeemed to take it ill. But my Lord, I cannot be poſitive whether Mr. *Bradshaw* and Mr. *Palms* were at any words. Then I took Mr. *Cave* to one ſide into the Entry, and he thought that I had a mind to fight him, but I did what I could to make an end of the quarrel. Upon which the Court highly commended Mr. *Mirriday*.

Court. This was in the Entry; but where was Sir *Charles Pymm*?

Mr. *Mirriday*. He was then in the Entry.

Court. Where was Mr. *Walters*?

Mr. *Mirriday*. He was at the door my Lord, but I cannot ſwear poſitively to any particular paſſage, as to the Murther, but Mr. *Walters* called Sir *Charles Pymm* Rogue, and gave him very ill words, and I ſaw him take him by the neck, and forced his head downwards, and ſaid, God Damm him he is dead, to the beſt of my remembrance my Lord. Then I took Sir *Charles* up in my arms, and pulled the Sword out of his Body, and then Mr. *Walters* ſaid God Damm him, let it ſtay in his Guts, or in his Body, or words to this effect.

Court. Was Mr. *Cave* or *Bradshaw* at the place where Sir *Charles* fell?

Mr. *Mirriday*. No my Lord, they were in the Entry ſcuffling there.

Court. What came of Mr. *Walters* afterwards?

Mr. *Mirriday*. My Lord, he ſtayed a little till I had pulled the Sword out of his Body, then he run away.

Court. Did they draw their Swords in the Entry?

Mr. *Mirriday*. I cannot tell that.

Court. Did you ſee them draw their Swords?

Mr. *Mirriday*. I cannot ſay Sir *Charles Pymm*'s Sword was drawn, but I ſaw Mr. *Walters* draw his Sword in the Street.

Court. Do you know whether Mr. *Walters* was wounded or no?

Mr. *Mirriday*. I do not know that, for I did not ſee the Wound given.

Court. Mr. *Walters*, will you ask him any queſtions?

Mr. *Walters*. Yes my Lord: Mr. *Mirriday*, what did you ſay to Sir *Charles Pymm* in the Fiſh-mongers Shop? did you not ſay, go and fight him, and I will be your Second?

Mr. *Mirriday*. My Lord, I do not remember one word of that.

Court. Mr. *Mirriday*, were you in any Fiſh-mongers Shop?

Mr. *Mirriday*. Yes, My Lord, I was there, but I do not remember one word between Mr. *Walters* and Sir *Charles*, and as I hope for Salvation I ſaid no ſuch thing, and that's all I have to ſay.

Clerk. Cryer, call Mr. *Neale*.

Mr. *Neale*. My Lord, I went and met with theſe Gentlemen that dined with us at the aforeſaid Tavern, and we had Fiſh, and two Beef Marrow bones, and a Plate of Beef for Dinner; and when we came down to go away, theſe Gentlemen met us, and ſaid, God Damm you; how did you like the Beef? which raiſed a quarrel amongſt us, but immediately after I thought it was all over, I ſaw Mr. *Walters* run Sir *Charles Pymm* thorough.

Court. Was his Sword drawn?

Neale. Yes, both of their Swords were drawn.

Court. Where was Mr. *Bradſhaw*?

Neale. I cannot tell where he was directly: But my Lord, I heard Sir *Charles Pymm* ſay nothing to Mr. *Walters*.

Clerk. Cryer, call Mr. *Palms*.

Palms. My Lord, after the reckoning was paid, we came down Stairs and called for a Coach, and becauſe it rained there was none to be had; and theſe Gentlemen followed us into the Entry, and ſo words to the ſame purpoſe as aforeſaid paſſed between them; after which I met Mr. *Bradſhaw*, and we fell out in the Fiſh mongers Shop.

Court. Who began?

Palms. I know not, I cannot remember that.

Court. Were you not in Drink?

Palms. My Lord, we drank nine or ten Bottles among ſix of us; after which Mr. *Bradſhaw* and I drew our Swords, and then Mr. *Mirriday* came and took him away from me into the Entry, and in the mean time while we were talking in the Entry, the buſineſs was done.

Court.

Court. Were your Swords put up again?

Paims. I had put up mine.

Council for the King. Did you take notice of what paſſed between Mr. *Walters* and Sir *Charles Pymm*?

Paimes. I heard nothing of high words.

Court. Yes, yes, it was all about the Beef.

Clerk. Cryer, call for Mr. *Preſtland* the Bar-keeper.

Preſtland. My Lord, I made the Bill for the Reckoning.

Court. Did you put the Beef into the Bill?

Preſtland. No, I did not, when they came down Stairs, the Coach was fetched for them, *viz.* for Sir *Charles Pymm* and his Company, and the Reckoning was paid; when Sir *Charles Pymm* and the reſt of his Company came down into the Entry, Mr. *Walters* came out of his Room, *&c.* and I heard them argue about their Dinner, and they came to me, and asked me what was to pay for Beef, and I told them nothing.

Court. Did you ſee the man killed?

Preſtland, My Lord, I did not ſee him killed, not I.

Court, Who was it that quarrelled with the Coachman?

Preſtland, My Lord, Mr. *Neale* quarrelled with the Coachman about his ſtaying, the Coach-man refuſed him, becauſe his Horſes were hot.

Clerk, Cryer, call *Mr. Brummidge.*

Brummidge. My Lord, between Eleven and Twelve a Clock in the Morning on the 4*th.* of *May* laſt, Sir *Charles Pymm* came to Mr. *Cloudſley's* Door in a Coach, and asked him what he might have for Dinner, who told him that he might have a Mullet and ſome Smelts, and I ſold a Mullet to Mr. *Cloudſley*, ſo Sir *Charles* went to the *Exchange*, and I ſaw no more of him till I ſaw him Kill'd. While I was in the Houſe, came in one Mr. *Allen* and others to enquire for Sir *Charles Pymm*, and Mr. *Cloudſley* told them that he had beſpoke a Dinner and was gone to the *Exchange*, *viz.* a Mullet and ſome Smelts, but one of the Gentlemen deſired a bit of the Beaf that was at the Fire, ſo Mr. *Cloudſley* ſaid he would get a Plate for him; ſo I went to the Door and the Coach-man came, and his Horſes being hot, he deſired to go away becauſe it Rained, but Mr. *Neale* put his Foot-boy into the Coach, and the Coach-man after pull'd his Boy out of the Coach and drove away; and after that, I ſaw Mr. *Cave* and others come to the Door and Juſtled each other into the next Shop and were at very high words, and ſo afterwards they went into the Entry again, and Sir *Charles Pymm* and Mr. *Walters* came, without the Door, the Latter of which ſaid, *Here is my Hand, and here is my Sword*; but they returned both in again into the Tavern, and within two Minutes came out again, and I ſaw Mr. *Walters* Thruſt Sir *Charles Pymm* through his Back.

Court. Did you ſee him do any thing to him after he was down?

Brummidge. No my Lord, I did not.

Court. Did you not ſay that *Walters* went over the Kennel and drew his Sword and ſtood upon his Guard, and then you ſay that you ſaw Sir *Charles Pymm* come out with his Sword Drawn; was his Sword Drawn?

Brummidge. I did not ſee him draw it, but it was Drawn.

Court. Where did he receive his Wound?

Brummidge. Within a Foot of the Kennel; I was but a little way off, but I did not ſee him beat his Head againſt the Ground.

Clerk. Cryer, call Mr. *Fletcher.*

Fletcher. My Lord, on *Friday* in the Evening on the 4*th.* of *May*, I was going by the Tavern door about Seven a Clock at Night, and I heard a noiſe and a talking of going to the other end of the Town to be Merry, and turning my ſelf back to hearken further, I ſaw Mr. *Walters* come out of the door and drew his Sword, and Sir *Charles Pymm* came out and drew his Sword, and preſently Mr. *Walter's* Sword was through Sir *Charles Pymm's* Body almoſt a Foot, and he fell down Crinkling immediately, and when he was down, I ſaw Mr. *Walters* hit him in the Kennel, and took him by the Nape of the Neck, and after cryed, *God Damn him, let the Sword ſtick in his Body*; and afterwards I ſaw Mr. *Mirriday* pull the Sword out of his Body.

Court. Did you ſee Mr. *Bradſhaw* there when Sir *Charles* fell?

Fletcher. No my Lord, I ſaw none there but Mr. *Walters* and Sir *Charles*, they were out of doors, and the reſt were in the Entry.

Mary Woite and *Sarah Webb* were called, who could give little or no Evidence as to matter of Fact, as concerning the Death of Sir *Charles*, and being Timorous, could not ſee what they might have ſeen, therefore think fit their Depoſitions at Large ſhould be omitted.

Clerk, Cryer, call Mr. *Allen.*

Allen. I know but very little of the matter, but that there was a Plate of Beef ſent up to us, but we knew not from whence it came, till afterwards the Drawer brought us word that the Gentlemen below had ſent it up, after which we drank their Healths and returned them Thanks for it after which I went to the Coffee-Houſe hard by, and ſat about half an hour, and preſently heard a cry of Murther, and I came down and ſaw Sir *Charles Pymm* lying with a Wound in his Body, and another in his Head, but I did not know who it was, not then; but I asked who did this Buſineſs, and exhorted the People to take them as ſoon as they could.

Court. I think you ſaid that Mr. *Bradſhaw's* Sword was Drawn.

Allen. Yes, it was, but I believe that he did not know that Sir *Charles Pymm* was Killed.

Mrs. *Sheepwaſh* was called, but could depoſe nothing material.

Court. Mr. Walters, you have been here Indicted together with Mr. *Bradſhaw* and Mr. *Cave.* for the Murther of Sir *Charles Pymm* Kt. and Baronet, you have heard what Charge hath been laid againſt you, which hath been a very ſtrong, one and now it behoves you to make your Defence as well as you can.

Mr. *Walters.* My Lord, I was no way the Occaſion of the Quarrel; when I came thither, I asked for ſome Meat, and having not eaten all the day before, we had a piece of Beaf, of which Sir *Charles Pymm* and his Company had ſome, who afterwards drank our Healths as I was informed. For my part my Lord, I never ſaw the Gentleman before in my days: My L. I am very ſorry it ſhould be my misfortune to kill him in the Quarrel. Sir *Charles Pymm* asked me ſaying, God Damn you Sir, what I had to do to meddle; I went preſently my Lord to a Fiſh-mongers where Mr. *Mirriday* was, and Sir *Charles Pymm* came, and Mr. *Mirriday* ſaid to him, Sir *Charles* Damn you Sir, go and Fight him, and I will be your Second, and preſently they came upon me and I Drew my Sword in my own Defence, and he run me Eight Inches into the Thigh, and at the ſame Paſs, I had the misfortune my Lord, to run him into the Body.

Court. Would you ask Mr. *Mirriday* any Queſtion?

Walters. Yes my Lord. Mr. *Mirriday*, did you ſee me ſtrike Sir *Charles's* Head upon the Ground?

Mirriday. No Sir, I did not ſee that, neither did I ſay any ſuce thing in the Fiſh-mongers Shop, as to bid Sir *Charles* Fight you.

Clerk, Cryer, call *Matthew Perin.*

Perin. My Lord, all that I ſaw of the Buſineſs was, that when the Coach-man was called to the door, Mr. *Neale* came and threatned him if he did not ſtay; then Mr. *Cave* and Mr. *Bradſhaw* was in the Entry, and I heard them diſcourſe about Beef, and ſome of them ſaid, you give us *Beef* and make us pay for it, and there was anſwer made they were Raſcals that ſaid ſo, for they did not. There was one of the Gentlemen in our Shop hearing of it, ſaid, Let me come to him, I will Fight him.

Court. Do you know the Man?

Perin. No, I do not know who it was.

Mr. Walters. I was Wounded at the ſame time my Lord

Court. That is admitted of.

Mr. Walters, Let him be asked whether I beat the head againſt the ground.

Perin, No, my Lord, I did not ſee him do that.

Court. He had a Wound, the queſtion is, how he came to it, whether he might not fall upon it himſelf, it was a ſlanting Wound.

Mr. *Walters,* Pray, my Lord, let Sir *Charles's* Sword be ſeen all blood, but that gave no ſatisfaction on either ſide.

Court. Mr. *Bradſhaw*, what have you to ſay for your ſelf?

Mr. *Bradſhaw*, My Lord, I was there, but I know nothing of the Death of Sir *Charles Pymm*, nor how he came by it, there was ſome words aroſe amongſt us, and I deſired them to ceaſe, for fear a further quarrel ſhould enſue upon it.

Court. Mr. *Cave*, What have you to ſay?

Mr. *Cave*, I know no more of the matter than this Gentleman ſaith: I ſaw not Sir *Charles Pymm* killed.

Clerk, Cryer, make Proclamation.

Cryer, All People are commanded to keep ſilence upon pain of Impriſonment.

Then Mr. Baron *Jenner* ſummed up the Evidence as followeth.

Bar. Jen. Gent. of the Jury, you have three Perſons Indicted *viz.* Mr. *Walters*, Mr. *Bradſhaw* and Mr. *Cave*, for Murthering

ing Sir *Charles Pymm* Baronet, and have had ſeveral Witneſſes called for the King againſt the Priſoners at the Bar, the firſt to which was Mr. *Murriday*, and he gives you this Account, and it is all that each and every one gives, and it agrees on all ſides; and he tells you, that all thoſe Gentlemen were to Dine at Mr. *Cloudſleys*, at the *Swan Tavern* in *Old Fiſh-ſtreet*; and that they were there at Dinner it is very plainly proved. And being there, it ſeems that ſome of thoſe Gentlemen had beſpoke a Fiſh Dinner, ſome Fleſh, and had ſome, *viz.* a Plate of Beef; and he tells you alſo that when Dinner was over, ſome Words did ariſe concerning the Reckoning, and that one of the Companies were got down Stairs in the Entry, where a further Quarrel did ariſe. *Mr Merriday* tells you further, that Mr. *Bradſhaw* and he Quarrelled, ſo there was a Scuffle in the Entry; after which things were pretty well quieted there, in comes *Mr. Walters* and Sir *Charles Pymm*, and while Mr. *Murriday* was ſecuring the firſt Quarrel, they, *viz.* Sir *Charles Pymm* and Mr. *Walters* were got out at the Door, and Sir *Charles* was ſtooping down, and Mr. *Walters* was puſhing upon his Neck and throwing him down.

So ſaid Mr. *Murriday*, and when he went to take the Sword out of his Body he ſaw him a dying Man.

The next Evidence was Mr. *Neale*, and he obſerves to you, that one of the Gentlemen did ſay, that the Quarrel was not intended againſt them; and he gives an account of the Story, how that it was about the Beef; how that Sir *Charles* was Run through by *Walters*, but did not ſee him knock his Head againſt the Ground.

Mr. *Palmer* gives the like Account, and ſaith; that whileſt they were a Scuffling in the Entry, Sir *Charles* was Kill'd at the Door.

The next Evidence is the Drawer, who tells you of a Squabble that Mr. *Neale* had with the Coach man at the Door, and how that there was left four of the Gentlemen behind, and that the Coach-man was unwilling to Wait becauſe it Rained, his Horſes being Hot, they might catch Cold; whereupon he put his Foot-boy into the Coach, and threatned the Coach-man if he went away: This was before they fell out about the Meat.

The next Evidence was one *Brammidge* the Fiſhmonger, he gives the ſame Account, how that a Quarrel was amongſt them, and how that Mr. *Walters* was on one ſide of the Kennel, and Sir *Charles Pymm* on the other ſide, and there they ſtood with their Swords drawn, and as ſoon as they came to Cloſe they Wounded each other, and Sir *Charles Pymm* was Killed, but he did not ſee his Head knock'd againſt the Ground.

Comes *Fletcher* my Lord Mayor's Officer, and he tells you that he was going by the Door home into *Bread-ſtreet*, and he ſees a Man that was wounded ſtooping down; and he Swears that Mr. *Walters* took him by the Nape of his Neck, and knock'd his head againſt the Ground, and heard him Swear, *Let the Sword ſtick in him.* *Sarah Web* and another Woman ſpeaks it to be in the like manner; and one of them talks of Mr. *Walter's* pulling Sir *Charles Pymm* out of the Entry before he would come out.

Laſt of all Gentlemen, here was Mr. *Allen*, one of their Company, who went away to the Coffee-Houſe, and hearing Murther cryed out, he came and found Sir *Charles Pymm* Kill'd and quite Dead. This, Gentlemen, is the Evidence that you have heard as near as I can give it you.

Now for the Priſoner Mr. *Walters*, he would have you believe, as if Sir *Charles* had ſtruck him before he drew his Sword, but he hath not proved it: Likewiſe ſpeaks of Mr. *Fletcher*, but he doth not remember that Sir *Charles Pymm* ſtruck him before he drew: But ſo it was, Gentlemen, that was a quarrel in which that Honourable and Worthy Gentleman, Sir *Charles Pymm*, loſt his Life.

Now for Mr. *Bradſhaw*, he confeſſeth that there was a quarrel, but he ſaith that he did not know when or how Sir *Charles Pymm* was killed; and for *Mr. Cave*, I do not find any thing objected againſt him, nor either of them.

Now, Gentlemen, I muſt tell you what the Law is in this caſe: Firſt of all to begin with Mr. *Walters*, ſo as it fairs with *Mr. Walters*, ſo you may be guided to deal with the other two: Now it hath not been made appear by any of the Evidence that you have heard, that there was any premeditated malice between them, for they were never in company before, and knew not each other, ſo that there could be no manner of malice from him in particular.

The next ſtep, Gentlemen, is, Here is nothing that can impute a general malice upon *Mr. Walters*, for if I had no deſign to kill a man, and kill another with whom I do not quarrel, that cannot be any premeditated malice; but I rather think that there was a little heat of Wine amongſt them; And this whole Action was carried on by nothing elſe but by a hot and ſudden Frolick, and I am very ſorry that it ſhould fall upon ſuch a Worthy Gentleman as he was: And if ſo that there was no malice premeditated, then he can be found guilty of nothing but Manſlaughter; and as for the other two, they muſt be totally acquitted: if I have erred in the Summing up of theſe Evidences, or miſtaken my ſelf in any Point, here are my Brothers to help me.

Then the Gentlemen of the Jury withdrew for about the ſpace of half an hour, and returned into Court: Upon a ſcruple of Conſcience, one amongſt them ſpoke to the Court as followeth.

Jury. My Lord, We are not ſatisfied in our Conſciences concerning the death of Sir *Charles Pymm*, we find in it Malice fore thought, becauſe after he had run the Sword through his Body, he was not ſatisfied with that, but muſt knock his head againſt the ground: So we do take it, that the ſaid Sir *Charles Pymm* was maliciouſly Murthered.

Mr. Juſtice *Allibone*. Gentlemen of the Jury, I ſhall endeavour to direct you in this Caſe, and tell you what the Law ſaith in it, that it cannot reach mans Life, where no propenſe Malice is proved; that there is none proved, appears very plain to me, and I hope alſo to you, becauſe it hath been proved that thoſe Gentlemen, *viz.* the Priſoners at the Bar, and the deceaſed, had never been in company before.

Gentlemen, You are upon your Oaths to ſerve the King as Jury-men, and I, as a Judge, am upon my Oath to try the Cauſe as well on the behalf of the Living as the Dead: So that upon the whole Matter, Gentlemen, this can be called nothing elſe but a Storm, an ungoverned Storm that ſuch men are ſubject to; ſo that it doth not reach precedent Malice but ſubſequent Paſſion, which ſad Paſſion was continued to that height, that Sir *Charles Pymm* in the midſt of it loſt his Life.

Then the Jury went out again for about a quarter of an hour, and returning brought *Mr. Walters* in Guilty of Manſlaughter, but the other two were acquitted.

GOD SAVE THE KING.

With Allowance. C. N. June 4. 1688.

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